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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From:  
Securities and Exchange Commission  
Office of Investor Education and Advocacy  
Washington, DC 20549-0213

Extension: Rule 17f-4

OMB Control No. 3235-0225, SEC File No. 270-232

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (the “Paperwork Reduction Act”), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 17(f) (15 U.S.C. 80a-17(f)) under the Investment Company Act of 1940 (the “Act”)<sup>1</sup> permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities (“securities depositories”), subject to rules adopted by the Commission.

Rule 17f-4 (17 CFR 270.17f-4) under the Act specifies the conditions for the use of securities depositories by funds<sup>2</sup> and their custodians.

The Commission staff estimates that 140 respondents (including an estimated 79 active

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<sup>1</sup> 15 U.S.C. 80a.

<sup>2</sup> As amended in 2003, rule 17f-4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. See Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) (68 FR 8438 (Feb. 20, 2003)). The term “fund” is used in this Notice to mean a registered investment company.

funds that may deal directly with a securities depository, an estimated 42 custodians, and 19 possible securities depositories)<sup>3</sup> are subject to the requirements in rule 17f-4. The rule is elective, but most, if not all, funds use depository custody arrangements.<sup>4</sup>

Rule 17f-4 contains two general conditions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets.<sup>5</sup> This obligation does not contain a collection of information because it does not impose identical reporting, recordkeeping or disclosure requirements. Funds and custodians may determine the specific measures the custodian will take to comply with this obligation.<sup>6</sup> If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will meet similar obligations, which is a collection of information for purposes of the Paperwork Reduction Act. All funds that deal directly with securities depositories in reliance on rule 17f-4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository's

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<sup>3</sup> The Commission staff estimates that, as permitted by the rule, an estimated 2% of all active funds may deal directly with a securities depository instead of using an intermediary. The number of custodians is estimated based on information from Morningstar Direct<sup>SM</sup>. The Commission staff estimates the number of possible securities depositories by adding the 12 Federal Reserve Banks and 7 active registered clearing agencies. The Commission staff recognizes that not all of these entities may currently be acting as a securities depository for fund securities.

<sup>4</sup> Based on responses to Item 18 of Form N-SAR (17 CFR 274.101), approximately 98 percent of funds' custodians maintain some or all fund securities in a securities depository pursuant to rule 17f-4.

<sup>5</sup> Rule 17f-4(a)(1). This provision incorporates into the rule the standard of care provided by section 504(c) of Article 8 of the Uniform Commercial Code when the parties have not agreed to a standard. Rule 17f-4 does not impose any substantive obligations beyond those contained in Article 8. Uniform Commercial Code, Revised Article 8 -- Investment Securities (1994 Official Text with Comments) ("Revised Article 8").

<sup>6</sup> Moreover, the rule does not impose any requirement regarding evidence of the obligation.

written rules when the rule was amended. Therefore, we estimate there is no ongoing burden associated with this collection of information.<sup>7</sup>

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.<sup>8</sup> If a fund deals directly with a depository, the depository's contract with or written rules for its participants must provide that the depository will provide similar financial reports,<sup>9</sup> which is a collection of information for purposes of the Paperwork Reduction Act. Custodians and depositories usually transmit financial reports to funds twice each year.<sup>10</sup> The Commission staff estimates that 42 custodians spend approximately 787 hours (by support staff) annually in transmitting such reports to funds.<sup>11</sup> In addition, approximately 79 funds (*i.e.*, two percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. Commission staff estimates that depositories spend approximately 18 hours (by

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<sup>7</sup> The Commission staff assumes that new funds relying on 17f-4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

<sup>8</sup> Rule 17f-4(a)(2).

<sup>9</sup> Rule 17f-4(b)(1)(ii).

<sup>10</sup> The estimated 42 custodians would handle requests for reports from an estimated 3,371 fund clients (approximately 80 fund clients per custodian) and the depositories from the remaining 79 funds that choose to deal directly with a depository. It is our understanding based on staff conversations with industry representatives that custodians and depositories transmit these reports to clients in the normal course of their activities as a good business practice regardless of whether they are requested. Therefore, for purposes of this Paperwork Reduction Act estimate, the Commission staff assumes that custodians transmit the reports to all fund clients.

<sup>11</sup> (3,371 fund clients x 2 reports) = 6,742 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 787 hours (7 minutes x 6,742 transmissions).

support staff) annually transmitting reports to the 79 funds.<sup>12</sup> The total annual burden estimate for compliance with rule 17f-4's reporting requirement is therefore 805 hours.<sup>13</sup>

If a fund deals directly with a securities depository, rule 17f-4 requires that the fund implement internal control systems reasonably designed to prevent an unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officers' instructions).<sup>14</sup> All funds that seek to rely on rule 17f-4 should have already implemented these internal control systems when the rule was amended. Therefore, there is no ongoing burden associated with this collection of information requirement.<sup>15</sup>

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's collection of information requirement is 805 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. This estimate is not derived from a comprehensive or even representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the

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<sup>12</sup> (79 fund clients who may deal directly with a securities depository x 2 reports) = 158 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 18 hours (7 minutes x 158 transmissions).

<sup>13</sup> 787 hours for custodians and 18 hours for securities depositories.

<sup>14</sup> Rule 17f-4(b)(2).

<sup>15</sup> The Commission staff assumes that new funds relying on 17f-4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Kevin M. O'Neill  
Deputy Secretary

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